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**BY HAND DELIVERY**

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, NW  
Washington, DC 20554

Re: Performance Measurements and Reporting Requirements for  
Operations Support Systems, Interconnection, and Operator  
Services and Directory Assistance  
CC Docket 98-56, RM 9101

Dear Ms. Salas:

On behalf of LCI\* attached is an original and four copies of the Company's Reply Comments on Notice of Proposed Rulemaking concerning Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance.

One copy has been delivered to Janice Myles of the Common Carrier Bureau, and one copy has been delivered to the International Transcription Service, Inc.

Sincerely,



Jane Kunka  
Manager, Public Policy

\*Note: On June 5, 1998, LCI International, Inc. was acquired by  
Qwest Communications International, Inc.

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Performance Measurements and	)	CC Docket No. 98-56
Reporting Requirements	)	RM-9101
For Operations Support Systems,	)	
Interconnection, and Operator Services	)	
And Directory Assistance	)	

**REPLY COMMENTS OF LCI INTERNATIONAL TELECOM CORP.  
ON NOTICE OF PROPOSED RULEMAKING**

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July 6, 1998

## SUMMARY

The Commission has proposed to issue non-binding performance measurements and reporting requirements to guide the state commissions as they evaluate and implement individual state Operations Support Systems (OSS) requirements. LCI remains concerned that this approach will further delay the availability of much-needed criteria to assess incumbent local exchange carrier (ILEC) compliance with section 251 of the Telecommunications Act of 1996. Some state commissions simply will be unable to promulgate rules in a timely manner, and others may fail to do so altogether. Furthermore, the Commission's proposal may result in multiple sets of rules, creating a large burden on ILECs that must compile the OSS data and competitive local exchange carriers (CLECs) and regulators that must evaluate it.

LCI, therefore, reiterates our request that the Commission promulgate binding minimum national performance standards and reporting requirements for OSS. For the purposes of these Reply Comments, "performance standards" means measurement categories and methodologies – both of which the Commission has included in the NPRM in non-binding form – as well as default performance benchmarks. If the Commission chooses to issue non-binding model performance measurements as proposed, however, it should establish a date certain after which the guidelines will become mandatory in those states that have not already adopted OSS requirements.

Although the Commission has proposed to promulgate only non-binding rules in this proceeding, the ILECs continue to raise a number of arguments in opposition which are clearly wrong and amount to nothing more than red herrings. First, they raise the familiar argument that the Commission was stripped of its authority to make these rules by the Eighth Circuit. This simply is not true, as the court affirmed the Commission's jurisdiction over OSS as an unbundled network element. Second, several ILECs argue that OSS performance measurements negotiated in the context of individual interconnection agreements are working to assure parity of OSS access. This is also false, as evidenced by the fact that several state commissions, the FCC and the Justice Department have all turned away ILEC 271 bids on OSS grounds. Contrary to ILEC assertions, OSS access continues to be a serious problem for those seeking to compete in local markets.

## TABLE OF CONTENTS

<b>I. UNIFORM MANDATORY NATIONAL OSS REQUIREMENTS .....</b>	<b>1</b>
A. THE EIGHTH CIRCUIT DECISION SUPPORTS THE COMMISSION'S AUTHORITY TO DEVELOP MANDATORY NATIONAL OSS REQUIREMENTS. ....	1
B. ILEC ASSERTIONS THAT OSS DISCRIMINATION DOES NOT EXIST ARE PATENTLY WRONG..	2
C. INDIVIDUAL AGREEMENTS DO NOT ADEQUATELY ENSURE OSS PARITY. ....	3
D. IF THE COMMISSION CHOOSES TO ADOPT NON-BINDING GUIDELINES IN THIS PROCEEDING, IT SHOULD ESTABLISH A DATE CERTAIN AFTER WHICH SUCH GUIDELINES WOULD BECOME BINDING IN A STATE THAT HAS NOT ADOPTED ITS OWN OSS REQUIREMENTS. ....	4
E. REGARDLESS OF WHETHER THE COMMISSION ADOPTS THE PROPOSED REQUIREMENTS AS MANDATORY RULES OR GUIDELINES, IT SHOULD APPLY SUCH REQUIREMENTS WHEN EVALUATING RBOC APPLICATIONS UNDER SECTION 271.....	5
F. THE COMMISSION SHOULD ESTABLISH A CLEARINGHOUSE FOR PERFORMANCE REPORTS ..	7
<b>II. REPORTING REQUIREMENTS AND PERFORMANCE STANDARDS.....</b>	<b>7</b>
A. MSAs ARE THE PROPER GEOGRAPHICAL UNITS TO PROVIDE MEANINGFUL ANALYSIS OF OSS PERFORMANCE DATA. ....	7
B. THE COMMISSION SHOULD ESTABLISH PERFORMANCE STANDARDS WHERE NO EQUIVALENT RETAIL MEASUREMENT EXISTS.....	9
C. THE COMMISSION SHOULD REQUIRE ILECS TO REPORT DISAGGREGATED DATA FOR EACH INDIVIDUAL CLEC THAT RECEIVES SERVICES.....	11
<b>III. CONCLUSION .....</b>	<b>12</b>

LCI International Telecom Corp. (LCI) hereby respectfully submits these Reply Comments in response to the comments filed by parties in this proceeding.

## **I. Uniform Mandatory National OSS Requirements**

### ***A. The Eighth Circuit Decision Supports The Commission's Authority To Develop Mandatory National OSS Requirements.***

As LCI discussed in our initial comments, the Eighth Circuit decision in *Iowa Utils. Bd. v. FCC*<sup>1</sup> supports the Commission's authority to develop mandatory national OSS requirements. BellSouth argues that the Commission does not have the authority to regulate OSS, erroneously comparing national model OSS requirements to the national model pricing rules the Commission included in its order denying Ameritech Michigan's Section 271 application.<sup>2</sup> Citing the Eighth Circuit's writ of mandamus prohibiting the Commission from enforcing its model pricing rules in Section 271 proceedings, BellSouth suggests that the Eighth Circuit would issue a similar writ to negate any model OSS requirements adopted by the Commission in this proceeding.<sup>3</sup>

Such an argument is misplaced, however, because the histories of the pricing rules and OSS rules are different. Prior to issuing the writ of mandamus, the Eighth Circuit had vacated uniform pricing rules<sup>4</sup> adopted in the Commission's *Local Competition Order*.<sup>5</sup> In contrast, the Eighth Circuit has not vacated any Commission rules regarding OSS and, in fact, upheld the Commission's jurisdiction over OSS as an unbundled network element.<sup>6</sup> Therefore, for these

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<sup>1</sup> *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8<sup>th</sup> Cir. 1997).

<sup>2</sup> BellSouth comments at 4-5.

<sup>3</sup> *Id.* at 5.

<sup>4</sup> *Iowa Utils. Bd.*, 120 F.3d at 819.

<sup>5</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 (1996).

<sup>6</sup> *Iowa Utils. Bd.*, 120 F.3d at 809.

reasons and those discussed in LCI's comments, the Commission is well within its jurisdiction to adopt OSS requirements without risking intervention by the court.

*B. ILEC Assertions That OSS Discrimination Does Not Exist Are Patently Wrong.*

LCI objects to BellSouth's statement that "[t]he sole real world basis cited for this proceeding is '*anecdotal evidence* suggesting that incumbent LECs *may* not be providing nondiscriminatory access to OSS functions and interconnection.'" <sup>7</sup> BellSouth further asserts that the Commission "is moving without real evidence of need." <sup>8</sup> These statements are patently wrong. The Commission did not offer "anecdotal evidence" as the sole basis for this proceeding. In fact, the Commission cited its rejection of three RBOC applications under Section 271, including the rejections of BellSouth's applications in Louisiana and South Carolina, in part because the RBOCs did not demonstrate they provide nondiscriminatory access to their OSS functions. <sup>9</sup> BellSouth's statement is a blatant mischaracterization of the current state of the industry that ignores the Commission's earlier findings regarding BellSouth's OSS. Because BellSouth refuses to acknowledge that its OSS fails to comply with the Act even after the Commission explicitly denounced those systems, it is clear that BellSouth will not voluntarily comply with any model rules the Commission adopts to rectify OSS deficiencies.

Dismissing the numerous CLEC complaints as "anecdotal evidence that discrimination *may* have occurred," <sup>10</sup> BellSouth further contends that "the benefits from this proceeding remain purely hypothetical." <sup>11</sup> This argument is fundamentally flawed, however, and it highlights the need for a uniform system of national OSS requirements. Contrary to BellSouth's argument that

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<sup>7</sup> BellSouth comments at 6 (citing NPRM ¶ 13).

<sup>8</sup> BellSouth comments at 7.

<sup>9</sup> NPRM ¶ 13 (citing *Ameritech Michigan 271 Order*, 12 FCC Rcd 20543, 1997; *BellSouth South Carolina 271 Order*, FCC 97-418, December 1997; *BellSouth Louisiana 271 Order*, FCC 98-17, February 1998).

<sup>10</sup> BellSouth comments at 9.

<sup>11</sup> BellSouth comments at 9.

*because* only “anecdotal” evidence exists there is *no* need for performance measurements, it is precisely for this reason that mandatory performance measurements *are* desperately needed.

Without a uniform, objective method for measuring OSS performance, CLECs will be left with only anecdotal evidence of discrimination. In contrast, performance measurements of the kind proposed by the Commission will provide an objective method for determining whether discrimination exists and would eliminate the need to rely on anecdotal evidence.

*C. Individual Agreements Do Not Adequately Ensure OSS Parity.*

Several ILECs argue that because numerous interconnection and resale agreements contain provisions requiring performance measurements, the Commission should not develop mandatory national requirements.<sup>12</sup> These ILECs give the false impression that nondiscriminatory access to OSS is, if not already fully realized, then imminent. According to them, negotiated interconnection agreements are now satisfactorily implementing local competition and assuring OSS parity. While these arrangements may sound promising on paper, however, nondiscriminatory OSS access is not being provided until those arrangements are fully implemented.

For example, SBC Communications maintains that it is already providing ample information on OSS performance through individual interconnection agreements with CLECs and agreements with state commissions and the Department of Justice: “These agreements provide sufficient performance measurements and reporting requirements to allow CLECs, state commissions, and [the FCC] to judge whether ILECs are ‘providing services and facilities in a manner that favors their own retail operations over competing carriers or in a manner that favors

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<sup>12</sup> Bell Atlantic comments at 2-3; SBC comments at 2.

certain competing carriers over others.”<sup>13</sup> The Texas Public Utilities Commission (PUC), however, strongly disagrees. On May 21, 1998 the Texas PUC cited SBC’s failure to provide nondiscriminatory OSS as a major reason for refusing to support its Section 271 application.<sup>14</sup> In a separate statement, Chairman Patrick Wood III voiced concerns regarding SBC’s OSS performance and clearly attributed the lack of competition in the market to the conduct of SBC, not CLECs:

“In my mind, there are some major issues – rebundling, OSS, performance measurements, ease of doing business, the overhang from the SWBT’s litigation – that we must resolve. *In the end, though, there is the big issue: how do we develop a performance measure to guarantee cooperation?* . . . If I felt the lack of competition were from lack of interest or commitment on the part of the new entrants, it would be easy to dismiss their concerns, but for most of the participants in this hearing, that is not the case. This is potentially the richest telecom market in the country. Legal and regulatory barriers to local market entry have been eliminated and we have approved countless applications for new authority and interconnection agreements. *But a piece of paper doesn’t mean much if the incumbent really isn’t interested in making this work.*”<sup>15</sup>

Furthermore, the disparity of bargaining power between large and small carriers may lead to varying performance standards in negotiated agreements. Larger carriers that have more bargaining power may be able to negotiate more comprehensive measurements and higher standards than smaller carriers with less bargaining power. Thus, the assertion that OSS arrangements in interconnection agreements are sufficient to ensure adequate OSS performance measurements and parity of access for all carriers is not supported by the evidence.

*D. If The Commission Chooses to Adopt Non-Binding Guidelines In This Proceeding, It Should Establish A Date Certain After Which Such Guidelines Would Become Binding In A State That Has Not Adopted Its Own OSS Requirements.*

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<sup>13</sup> SBC comments at 2.

<sup>14</sup> Statements of Commissioners Wood, Walsh, and Curran at May 20, 1998 open meeting of the Texas Public Utilities Commission.

<sup>15</sup> Wood Statement, May 21, 1998 (emphasis added).



LCI maintains that the Commission should immediately adopt binding national OSS requirements because that approach would ensure a uniform system of performance measurements and reporting. If the Commission instead chooses to adopt its proposed non-binding guidelines, however, LCI supports the proposal that the Commission should establish a date certain—preferably not more than six months after the Commission issues its rules—after which any guidelines established in this rulemaking will become mandatory in states that have not already adopted rules.<sup>16</sup> While several states have begun proceedings to establish OSS measurements and requirements, most have not. If the Commission issues only non-binding guidance and waits for the states to act, critical time will be lost, and the system that emerges may include varying and possibly inadequate rules. As proposed by General Services Administration (GSA), the Commission's performance measurements and reporting requirements should be viewed as the "minimum acceptable level on a mandatory basis after an initial period ... and would be applied as the default in states that had not acted to adopt a similar set of measures and requirements within that period."<sup>17</sup>

*E. Regardless Of Whether The Commission Adopts The Proposed Requirements As Mandatory Rules Or Guidelines, It Should Apply Such Requirements When Evaluating RBOC Applications Under Section 271.*

The Commission's decision to adopt the proposed measurements as model guidelines rather than mandatory rules should not affect its decision to apply such requirements when evaluating an RBOC's section 271 application. The Commission is charged with evaluating Section 271 applications with the advice of state commissions and the Department of Justice; however, the 1996 Act grants the Commission final authority to determine whether the RBOC is

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<sup>16</sup> GSA comments at 14; GST comments at 5.

<sup>17</sup> GSA comments at 14.

in compliance. The use of a uniform set of performance measurements is consistent with the Commission's statutory authority and with the public interest.

LCI supports CompTel's argument that the Commission's authority to adopt such a policy cannot reasonably be challenged.<sup>18</sup> Therefore, the Commission should disregard Bell Atlantic's unreasonable challenge: "where a state determines that performance measurements negotiated between carriers or arbitrated under the Act are sufficient to ensure nondiscriminatory service, the Commission cannot, in evaluating a petition for relief under Section 271, require that the Bell operating company produce all of the measurements proposed in this Notice"<sup>19</sup> This is contrary to the 1996 Act, which imbues the Commission with both the authority and the duty to evaluate whether an application satisfies the Competitive Checklist, including whether an RBOC provides nondiscriminatory access to its OSS. There is no limitation on how the Commission should assess these applications; therefore, because application of the proposed guidelines would not add to the requirements of the Checklist, the Commission should establish a rule in this proceeding that these guidelines would be utilized in future Section 271 proceedings.

Bell Atlantic further argues that use of the proposed measurements "could subject the applicant to conflicting requirements from the state and the Commission."<sup>20</sup> This argument is disingenuous because Bell Atlantic is itself supporting the use of conflicting requirements by maintaining that the states, not the Commission, should establish the rules for OSS performance measurements and reporting requirements. By asserting that the states should be able to adopt varying state rules, Bell Atlantic and other ILECs are willingly subjecting themselves to a multitude of different OSS requirements.

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<sup>18</sup> CompTel comments at 14.

<sup>19</sup> Bell Atlantic comments at 4.

<sup>20</sup> Bell Atlantic comments at 4.

#### *F. The Commission Should Establish a Clearinghouse for Performance Reports*

LCI agrees with the comments of the Association for Local Telecommunications Services that the Commission should establish a local clearinghouse for performance data.<sup>21</sup> If all reports were posted on the Internet, all carriers would be able to easily access the information. This would allow all carriers and state commissions to assess the quality of service provided to each carrier in each state. The Commission suggests that this information may be confidential so an ILEC "may not wish to divulge measurement results relating to the provision of services to itself or its local exchange affiliates." This information, however, is exactly what must be divulged in order for CLECs to assess the quality of service that an ILEC provides. Furthermore, by providing information about each CLEC individually, other CLECs can determine if they are receiving nondiscriminatory access equal to that provided by other CLECs.

## **II. Reporting Requirements And Performance Standards**

#### *A. MSAs Are The Proper Geographical Units To Provide Meaningful Analysis Of OSS Performance Data.*

LCI agrees that data allowing market-to-market comparison of OSS performance is necessary to facilitate meaningful analysis and maintains that the Metropolitan Statistical Area (MSA) is the geographical unit that best serves this purpose. The Washington Utilities and Transportation Commission recognizes the importance of disaggregation between metropolitan and rural areas because "service availability, repair response, and service quality differ significantly between rural and metropolitan areas. Therefore, a competitor in a high density area should be compared with other metropolitan area results, and a competitor in a rural area should be compared with rural results."<sup>22</sup>

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<sup>21</sup> ALTS comments at 19.

<sup>22</sup> Washington Utilities and Transportation Commission comments at 8.

Furthermore, as MediaOne correctly points out, MSAs are defined by the U.S. Census Bureau and track a core population area and adjacent communities that are socially and economically integrated with the core. "These geographic areas bear a relationship to the markets in which people live and work and often are generally coincident with market areas CLECs have entered."<sup>23</sup> LCI further agrees with MediaOne's assertion that MSAs are preferable to wire centers and LATAs because "LATAs and wire centers are geographic areas which exist solely as historic remnants of the monopoly telecommunications industry."<sup>24</sup> The MSA approach, therefore, is more meaningful to new entrant competitors.

The Commission should disregard ILEC claims that only statewide geographic reporting is feasible. Ameritech, Bell Atlantic and BellSouth all claim that reporting on a geographic level smaller than the state level would be both unmanageable and costly.<sup>25</sup> There is evidence, however, that ILECs already have extensive internal reporting procedures they have established to measure their own performance at disaggregated levels. As LCI noted in our comments, Michael J. Friduss, a former ILEC executive who testified on behalf of the Department of Justice, professed that the ILECs have developed measures to "allow for the comparison of performance between managers, territories, organizations and companies" for "all areas of customer affecting performance."<sup>26</sup> AT&T provides similar information in its comments demonstrating that the ILECs currently collect internal data on geographical levels below the state level:

"For business reasons, ILECs – and especially large companies such as RBOCs – establish multiple areas or zones for operating and measuring the results of their own business in a given state. For example, for many purposes, Bell Atlantic – New York divides itself into a number of operating areas.

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<sup>23</sup> MediaOne comments at 10-11.

<sup>24</sup> MediaOne comments at 11.

<sup>25</sup> Ameritech comments at 18-19; Bell Atlantic comments at 7-8; BellSouth comments at 16.

<sup>26</sup> LCI comments at 8.

Customers in those different operating areas may have different experiences with BA-NY, because different plant and operations groups serve them.”<sup>27</sup>

Because many ILECs, especially the RBOCs, currently track data below the state level, such reporting is feasible and would not impose further burdens on the larger ILECs. Furthermore, for the reasons discussed above, a more disaggregated measurement provides the meaningful data necessary for CLECs and regulatory agencies to evaluate an ILEC’s OSS performance. Most importantly, without such disaggregation, ILECs will be able to discriminate between the OSS provided in different geographical market areas and then conceal such varying performances within a larger reporting area. One would imagine that the ILECs would prefer measurements similar to those they already compile, thus the ILECs’ feasibility arguments are red herrings to compel the Commission to adopt less stringent performance measurements and reporting requirements in order to prevent apples to apples comparisons by CLECs and regulatory agencies.

*B. The Commission Should Establish Performance Standards Where No Equivalent Retail Measurement Exists.*

LCI strongly disagrees with Bell Atlantic’s position that the Commission should eliminate any performance measurements for which there is no retail analog and thus the ILECs do not currently measure for themselves, such as order status measurements,<sup>28</sup> order quality measurements,<sup>29</sup> and billing.<sup>30</sup> Bell Atlantic claims that the cost of providing these measurements

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<sup>27</sup> AT&T comments at 35.

<sup>28</sup> NPRM Appendix A, II.C: Average Reject Notice Interval, Average Firm Order Confirmation Notice Interval, Average Jeopardy Notice Interval, Percentage of Orders Given Jeopardy Notices, and Average Completion Notice Interval

<sup>29</sup> NPRM Appendix A, II.F: Percentage Order Flow Through, Percentage of Rejected Orders, and Average Submissions per Order

<sup>30</sup> NPRM, Appendix A, IV: Average Time to Provide Usage Records and Average Time to Deliver Invoices

would outweigh the benefits;<sup>31</sup> however, these measurements are vital to a CLEC's ability to attract and maintain customers. As discussed above, LCI has experienced a myriad of problems in reselling ILEC services because those ILECs have failed to provide timely order status, order quality and billing information. Customers will not remain with a service provider who fails to start their service on time or cannot provide timely invoices or billing records, and LCI's customers do not realize that such delays are the caused by the ILECs rather than LCI.

The ILECs must begin to recognize and treat CLECs as their customers for resale and unbundled elements; therefore, it is appropriate for them to compile additional performance measurements for an additional class of customers, namely CLECs. LCI concurs with ALTS' assessment of the balance between the benefits of regulation and the burdens potentially imposed on the ILECs. As ALTS aptly notes, "[o]nly monopolists enjoy the luxury of remaining ignorant about how their business processes affect customer service."<sup>32</sup> Thus, ILECs are not burdened by measuring their treatment of retail and wholesale customers because these measurements are necessary to their future success as the local exchange markets become competitive.

For example, Bell Atlantic argues that the Commission's proposed measurement for Center Responsiveness, measuring the amount of time an ILEC takes to answer calls from competing carriers to its wholesale service center,<sup>33</sup> is not a meaningful measure because the wholesale customer centers are only "handling exceptions and performing 'help' functions [and are therefore] not analogous to the retail center handling calls for Bell Atlantic end users."<sup>34</sup> While SBC and Ameritech concede that such as measure is useful,<sup>35</sup> Bell Atlantic continues to assert a monopolistic view that such response time to wholesale customers need not be

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<sup>31</sup> Bell Atlantic comments at 8.

<sup>32</sup> ALTS comments at 3.

<sup>33</sup> NPRM ¶ 92 and Appendix A, § V.B.

<sup>34</sup> Bell Atlantic comments, Appendix A, at 6.

measured. In a competitive market, businesses routinely provide performance data on their service to their customers; therefore, the Commission should require the ILECs to measure Center Responsiveness and measurements without retail analogs to ensure that wholesale customers are able to provide their retail customers with adequate service and timely repair information. LCI further urges the Commission to adopt performance standards for such measurements so that CLECs will receive adequate service from the ILECs. Without such baselines, the ILECs will continue to argue that they do not have to conform to *any* standard because they have no basis for comparison.

*C. The Commission Should Require ILECs to Report Disaggregated Data For Each Individual CLEC That Receives Services.*

SBC and Ameritech<sup>36</sup> agree generally with the Commission's conclusion that ILECs should disaggregate performance data for service provided to the ILEC itself, to affiliates who provide local service, to CLECs in the aggregate, and to CLECs individually.<sup>37</sup> LCI supported this position in our comments and agrees with the Commission's reasoning that this disaggregation will permit competing carriers, the Commission, and the states commissions to detect discrimination. Bell Atlantic, on the other hand, complains that individual CLEC reporting would drastically increase its reporting burden and argues that such disaggregate of data disaggregated by geographical location, performance measurement, and by individual CLECs "would result in many of the measurements being based on sample sizes so small that they would provide no useful information."<sup>38</sup> LCI strongly disagrees with this proposition and maintains that such disaggregated data is the *most* useful information that ILECs could provide. Regardless, the

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<sup>35</sup> SBC comments at 18; Ameritech comments at 66.

<sup>36</sup> SBC comments 3; Ameritech comments at 19.

<sup>37</sup> NPRM ¶ 39.

<sup>38</sup> Bell Atlantic comments at 7-8, n.13.

acknowledgement by two other ILECs, SBC and Ameritech, illustrates that Bell Atlantic's doomsday claims are unfounded.

### **III. Conclusion**

LCI commends the Commission's work with respect to the measurement categories and methodologies for OSS which it has developed in this rulemaking. However, we remain concerned that the non-binding approach proposed by the Commission will further delay the availability of much needed criteria to assess provision of OSS functions. Therefore, we urge the Commission to promulgate binding, enforceable national performance standards and reporting requirements which, in addition to the categories and methodologies proposed the NPRM, include default performance benchmarks.

The standards should require sufficient disaggregation by geography, wholesale customer, and function to provide useful evaluation of OSS services. It is only through such detailed national performance standards that CLECs will have the data necessary to make "apples-to-apples" comparisons of OSS provisioning and the FCC, the state commissions, and the Department of Justice's will have the capacity for rigorous evaluation of ILEC section 271 applications.

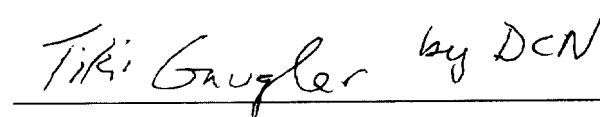


Respectfully submitted,

LCI INTERNATIONAL TELECOM CORP.

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Dated: July 6, 1998

I, Douglas Nelson, do hereby certify that copies of the foregoing reply comments of LCI International Telecom Corp. for the Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, CC Docket No. 98-56, RM 9101 were served this 6<sup>th</sup> day of July, 1998 to the following by hand delivery.

  
\_\_\_\_\_  
Douglas C. Nelson

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